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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of:	)	
	)	
Policy and Rules Concerning Rates	)	CC Docket No. 87-313
for Dominant Carriers	)	
	)	
Revisions to Price Cap Rules for	)	CC Docket No. 93-197
AT&T	)	

**COMMENTS  
OF THE  
UNITED STATES TELEPHONE ASSOCIATION**

The United State Telephone Association (USTA) submits these comments in response to the May 18, 1995 Further Notice of Proposed Rulemaking in this docket (FNPRM). USTA is a trade association with over 1,000 local exchange carrier members of all sizes, from GTE and the Regional Bell Operating Companies to hundreds and hundreds of small telephone companies that serve less than 50,000 lines. Indeed, a review of the largest 150 local exchange carriers shows that approximately 30 of those companies serve less than 10,000 lines. One can extrapolate from this fact that most USTA member companies are quite small.

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On June 9, 1995 USTA, jointly with the National Rural Telecom Association (NRTA), the National Telephone Cooperative Association (NTCA), and the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO), filed comments on AT&T's Motion for Reclassification as a Non-Dominant Carrier, CC Docket No. 79-252 (Non-Dominant Proceeding). As the FCC itself recognizes, the issues under consideration in the Non-Dominant Proceeding are related to those the Commission is considering here. See, e.g., FNPRM at para. 35. A copy of the joint filing in the Non-Dominant Proceeding is attached, and USTA asks that it be made a part of this FNPRM proceeding.

I. Geographic Toll Rate Averaging Must Be Preserved.

The FCC is seeking "comment on the relative availability of AT&T discounted offerings as compared to domestic MTS offered at basic rates." FNPRM at para. 63. In fact, AT&T's discount plans are not offered ubiquitously, forcing customers in rural areas to pay the higher basic tariff rates while customers in more urban areas take advantage of the discount plans. This disparity is tantamount to geographic toll rate

deaveraging, and is therefore contrary to longstanding public policy.<sup>1</sup>

USTA strongly supports a policy of nationwide geographic toll rate averaging. This policy is necessary to prevent the country's rural communities from becoming isolated from the cultural, social, and economic life of the rest of the nation. If the quality of life and the economic viability of the nation's rural communities are to be preserved, geographic toll rate averaging must be preserved.

The FCC's areas of inquiry in paragraph 63 of the FNPRM are critical to the maintenance of effective geographic toll rate averaging in this country. For example, AT&T has stated that its "best" discount plans are available in "nearly all locations". See AT&T April 24, 1995 Ex Parte submitted in the Non-Dominant Proceeding at p. 20, n. 49. However, AT&T also touts the fact that "equal access is now available on over 97% of the telephone lines in the country". Id. at p. 20. Certainly, the implementation of equal access has been a

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<sup>1</sup>See, e.g., In the Matter of Policy and Rules for Dominant Carriers, CC Docket 87-13, Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd 665, 679 (1991); ("AT&T Price Cap Recon. Order"); Id., Order, 4 FCC Rcd 2873 (1989) ("AT&T Price Cap Order"); Id., Further Notice of Proposed Rulemaking, 3 FCC Rcd 3195, 3451 (1988).

significant accomplishment. But the fact remains that the 2-plus percent where equal access is not available encompasses well over 2 million customers -- almost exclusively residing in rural areas.

Only AT&T has the information needed to be able to inform the FCC of the degree of overlap between the geographic areas where AT&T's "best" discount plans are not available and the geographic areas where equal access is not available. The Commission should direct AT&T to produce this information. It is critical to the FCC's informed consideration of the issues it raises in paragraph 63 of the FNPRM.

II. The FCC Should Take No Final Action on the FNPRM Until It Has Gathered Information On Telephone Penetration Rates In Its Upcoming Rulemaking, Including the Relationship of Toll Services to Universal Service.

In the FNPRM, the FCC seeks "comment as to whether universal service concerns are implicated in our regulation of AT&T's basic rates". FNPRM at para. 60. In particular, the Commission notes that "studies indicate that the majority of those without telephone service once were subscribers, but have been disconnected for non-payment of toll charges". Id. at para. 61. It is USTA's understanding from discussions with FCC

staff that the Commission will commence a rulemaking in the very near future on the issue of telephone service penetration.

The FCC effort will be taking an in-depth look at the reasons why approximately 6% of people in the United States do not have telephone service. The Commission will be attempting not only to isolate the causes, but to consider actions and programs that would help people who wish to have telephone service obtain it and keep it. Surely, the information collected in that effort will be highly relevant to the questions the FCC asks here about the relationship between AT&T's MTS offerings and universal service. Submissions in that upcoming proceeding on telephone penetration should be incorporated in this record, and there may be actions the FCC will wish to take in this docket to address issues uncovered in the telephone penetration proceeding.

IV. Simplifying Regulation and Removing Unnecessary Regulatory Burdens Are Important FCC Goals.

Consistent with the goals of simplifying regulation and removing unnecessary regulatory burdens, the FCC should combine price cap baskets and bands whenever possible--both in the AT&T plan and in the LEC plan. Thus, the Commission should adopt

its proposal to combine AT&T's existing time-of-day MTS service categories into a single domestic MTS service category. See FNPRM at para. 40-42. This step would give AT&T greater pricing flexibility.

However, the Commission must recognize that the existing residential index is a binding pricing constraint on AT&T's ability to raise the rates paid by residential MTS customers. Because of that fact, the Commission should adopt its proposed first option, a basic rate index, as a means of ensuring that the benefits of AT&T productivity and LEC access charge reductions flow to all residential MTS customers. The increased pricing flexibility from establishing a single domestic MTS service category, which can include promotions and optional calling plans,<sup>2</sup> would allow rate increases in basic MTS rates to offset price decreases in the service and pricing options also included within this service category. A basic

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<sup>2</sup>The Commission proposes to defer the question of whether AT&T optional calling plans should be removed from price cap regulation and to consider it in the Non-Dominant Proceeding. FNPRM at para. 35. If the FCC's resources are most efficiently used by deferring the issue, USTA certainly has no objection. However, the fact that AT&T is a dominant carrier has not been the central issue when the FCC has removed other AT&T services from price caps. There is no reason to change this analytical framework.

rate index, similar in operation to the residential index, is therefore needed to protect customers of basic MTS services from continually escalating prices. The proposed 5 percent upper banding limit for this basic rate index is too high and would allow substantial price increases in AT&T's non-discounted basic rates. Instead, the Commission should consider an upper banding limit closer to the 1 percent limit imposed by today's residential index.


V. The FCC's Rules Regarding Exogenous Costs Should Be the Same In the LEC and AT&T Plans

The FCC tentatively concludes that AT&T and the price cap LECs should be afforded the same treatment for exogenous costs. This approach is a sound one. However, the exogenous cost rules that the FCC recently adopted for the LECs place a substantial burden on those carriers to absorb accounting cost changes that are beyond their control. The Commission should reverse this new policy for exogenous costs and allow both AT&T and the LECs to treat exogenous costs under the standard the FCC originally established and used in the two price cap plans. If the Commission is unwilling to do so, however, it is still vital that all carriers operate under the same exogenous cost

rules. In that situation, the FCC should change the rules for AT&T to mirror the LEC plan.

VI. Conclusion

USTA supports efficient, rational, and effective regulation both for its own members and for AT&T. Certainly, AT&T should be permitted to offer discount plans and promotions and to do so in a way that allows AT&T to be responsive to the marketplace and to benefit its residential customers. However, the FCC must ensure that these plans and promotions are made available to customers in rural areas. Similarly, the FCC should ensure that the way in which it regulates AT&T advances this nation's universal service goals.

Respectfully submitted,  
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July 3, 1995



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In the Matter of:

AT&T's Motion for Reclassification  
as a Non-Dominant Carrier

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U.S. DEPARTMENT OF COMMERCE  
FEDERAL COMMUNICATIONS COMMISSION  
UNIT - SECRETARY

CC Docket No. 79-252

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COMMENTS  
OF THE LEC JOINT COMMENTERS

The National Rural Telecom Association (NRTA), National Telephone Cooperative Association (NTCA), Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO), and the United States Telephone Association (USTA) (Joint Commenters) submit these comments in response to the Federal Communications Commission's (Commission) Public Notice dated April 25, 1995. Joint Commenters are each trade associations representing the local exchange carrier industry.

NRTA is an association of rural commercial local exchange carriers which obtain financing under Rural Utilities Service (RUS, formerly REA) and Rural Telephone Bank (RTB) programs. NTCA represents approximately 500 small and rural LECs that are cooperatives or independently owned companies. OPASTCO is a national trade association of more than 440 independently owned and operated telephone companies serving rural areas of the United States and Canada. OPASTCO's members, which include both commercial companies and cooperatives, are small and rural local exchange carriers serving over 2 million customers. USTA represents over 1100 local exchange carrier members.

## INTRODUCTION AND SUMMARY

The Joint Commenters respectfully submit that AT&T's request for reclassification as a non-dominant carrier raises important issues with respect to interexchange services that should be addressed concurrently with AT&T's request. Specifically, the Commission should reaffirm its commitment to enforcing several basic policies with respect to the provision of long-distance services, by adopting rules where necessary to compensate for streamlining the tariff review process. While the Joint Commenters take no position as to whether AT&T's request should be granted, we urge that non-dominant status for AT&T and other interexchange carriers (IXCs) must not result in the Commission's direct or indirect abdication of established policies.

Specifically, the Commission should carefully enforce Section 214 obligations with respect to any AT&T request to discontinue service in an area not adequately served by another facilities-based interexchange carrier. AT&T's arguments in support of reclassification, which rely heavily on its allegations of supply elasticity in the interexchange market, acknowledge that consumers do not have abundant choices everywhere.<sup>1</sup> Moreover, even in exchanges where equal access is available, the Commission should ensure that reclassification of AT&T as non-dominant does not permit it to discontinue, reduce, or impair service where customers would be left without adequate interexchange service.

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<sup>1</sup> Compare AT&T ex parte, April 24, 1995, p. 21, with Id. at 20, "equal access is now available on over 97% of the telephone lines in the country." Even by AT&T's own statistical evidence, certain areas of the country are subject to risk of isolation were AT&T to discontinue service. A November 1993 NECA study states that over 2 million access lines are not yet converted to equal access. ("Building the Telecommunications Infrastructure in Rural America, Achievements Toward the Promise"). Of course, some equal access offices in rural areas nonetheless lack multiple carriers due to discontinuances, or are served only by AT&T and carriers who resell service provided through AT&T's facilities. In the latter case, a discontinuance by AT&T would be tantamount to a total discontinuance.

The Commission should reaffirm its commitment to geographic toll rate averaging, and adopt effective mechanisms to enforce this policy. The Commission should also continue to ensure that IXCs' flow-through reductions in access charges to all subscribers. Recent evidence suggests that neither AT&T nor other IXCs are meeting the Commission's expectations that rates be equal for subscribers in all areas and that access charge reductions be flowed through to all consumers. Accordingly, the Commission should affirm its commitment to enforcing these policies, and set forth what mechanisms it will employ to maintain them, particularly should AT&T be permitted the streamlined tariff review associated with non-dominant regulation.<sup>2</sup>

## **DISCUSSION**

### **I. AT&T Should Not Be Permitted to Discontinue Service in Areas Where There Is No Other Facilities-Based Interexchange Carrier Providing Equivalent Service.**

The Commission should carefully enforce Section 214 obligations with respect to any efforts by AT&T to discontinue service, particularly in rural areas without another facilities-based carrier. See 47 C.F.R. § 214(a). For rural customers, AT&T is in some cases the only viable option for long distance service. As AT&T notes, its request for regulation as a non-dominant carrier does not request any relaxation of current rules or elimination of AT&T's Title II obligations. See Ex Parte Letter from Charles L. Ward, April 24, 1995 ("April 24 letter"). Accordingly, the Commission should ensure that streamlined regulation does not compromise its obligation to protect rural subscribers from unlawful practices.

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<sup>2</sup> The Commission has on many occasions acted to preserve certain universal service policies, e.g. geographic toll rate averaging, in the context of establishing new mechanisms to enhance competition. See, e.g., MTS and WATS Market Structure, CC Docket 78-72, 80-286, 2 FCC Rcd 2953, 2956-57 (1987).

Even as a non-dominant carrier, AT&T is required to obtain authorization for proposed discontinuances, and provide notice of any proposed discontinuances of service to affected customers. Such notice must specify that the FCC will normally authorize a discontinuance unless it is shown that customers would be unable to receive service from another carrier. Customers have 15 days from receipt of notice to file comments with the Commission detailing the impact of the discontinuance. After 30 days from the date of notice, AT&T would be automatically permitted to discontinue service unless the Commission informs AT&T otherwise within the 30 day period. See 47 C.F.R. §§ 63.71; 63.90.

Should the FCC grant AT&T non-dominant status, it should reaffirm its commitment to universal service and articulate rule changes and an enforcement policy that the Commission will not grant AT&T Section 214 authority to discontinue service where end user customers would be left without adequate, reasonably priced long distance service. Specifically, the Commission should affirm that AT&T would be subject to Section 63.71's procedures, and will not be permitted to discontinue, reduce or impair service to areas with no other comparable facilities-based interexchange carrier. The Commission should clarify, or amend if necessary, Section 63.71 to require affirmative findings that the public will continue to receive adequate service as a pre-condition to the grant of any discontinuance. The Part 63 rules should also be amended to provide that carriers replacing AT&T must also apply for Section 214 discontinuance before abandoning service. Discontinuations would not serve the public interest if end users are left with no service or inferior service.

## **II. The Commission Should Reaffirm Its Commitment to Geographic Toll Rate Averaging and Flow-Through of Access Rate Reductions.**

Precluding AT&T from discontinuing service where no other adequate long-distance option is presently available would not impose any unusual burden on AT&T, particularly if the number of such exchanges is as low as AT&T claims. Similarly, if

AT&T is permitted to file its tariffs as a non-dominant carrier, the Commission should ensure that adequate mechanisms exist to enforce established Commission policies generally applicable to interexchange service providers. Specifically, the Commission should articulate an enforcement policy, along with specific mechanisms to carry out its enforcement, governing continuation of its recognized policies on geographic toll rate averaging and flow-through of access rate reductions.

### **1. Geographic Toll Rate Averaging**

The FCC has repeatedly stated its commitment to geographic toll rate averaging.<sup>3</sup> Geographic toll rate averaging means that for a particular type of customer and for a particular time of day, the same tariffed rate applies for all customers regardless of where the call originates or is terminated. Thereby, IXC's avoid unreasonably discriminating against rural subscribers.

However, many discount plans are not offered ubiquitously, forcing customers in some rural areas to pay the higher basic tariffed rate while other customers can take advantage of the discount plans. This disparity is, in effect, geographic toll rate deaveraging. This practice is particularly harmful to rural subscribers where calls for essential services, including medical emergencies, are often toll calls. Accordingly, the Commission should ensure that AT&T's discount plans and promotions are in fact offered to all customers in all geographic areas. See April 24 ex parte letter, p. 20, n. 29 ("AT&T's best residential discount plans. . . are available in nearly all locations).

**The question of whether AT&T should be reclassified as a non-dominant carrier presents a related question of how the Commission can effectively implement established**

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<sup>3</sup> See, e.g. In the Matter of Policy and Rules for Dominant Carriers, CC Docket 87-313, Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd 665, 679 (1991); ("AT&T Price Cap Recon. Order"); Id., Order, 4 FCC Rcd 2873 (1989) ("AT&T Price Cap Order"); Id., Further Notice of Proposed Rulemaking, 3 FCC Rcd 3195, 3451 (1988).

policies while simultaneously reducing regulation. As a nondominant carrier, AT&T would be permitted to file tariffs on one day's notice with the presumption that the tariffs are prima facie lawful. See 47 C.F.R. § 61.23. The Commission, in numerous orders, has stated that its tariff review process provides sufficient insurance that toll rates will be geographically averaged.<sup>4</sup> Particularly in light of the increase in tariff filings to introduce discount plans and promotions, a new mechanism is necessary to provide an effective safeguard against geographic toll rate deaveraging under streamlined tariff review. The Commission should explicitly mandate geographic toll rate averaging, and propose specific rules to enforce its policy in favor of geographic toll rate averaging in cases where carriers are entitled to streamlined tariff review. The Commission should at least reaffirm and enforce its policy requiring AT&T to make optional toll calling plans available nationwide, within a reasonable time, absent technical infeasibility.<sup>5</sup>

## **2. Flow-through of Access Charge Reductions**

The Commission has also established a policy that interexchange carriers must flow through reductions in access rates by appropriate changes to their own rates. See, e.g., 47 C.F.R. § 61.44(b)(requiring exogenous treatment of changes in LEC access rates); see also Price Cap Performance Review, CC Docket 94-1, First Report and Order, (April 7, 1995) ("LEC Price Cap Review"), para. 48.

Recent evidence suggests that whatever competition may exist in the interexchange market is not sufficient to ensure that interexchange carriers flow-through

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<sup>4</sup>See, e.g., AT&T Price Cap Recon. Order, 6 FCC Rcd 665, 679 ("[A]ny filing that proposed geographically deaveraged rates would be subject to the full 90-day notice period. . . [b]ased on these safeguards, we do not believe that specific regulations requiring geographic toll rate averaging are necessary"); see also Id. ("[A]ny effort AT&T might make to deaverage its rates would have to be done in the context of a public tariff filing.")

<sup>5</sup>In the Matter of Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans, FCC 85-540, 50 Fed. Reg. 42945, 59 Rad. Reg. 70, 90 (1985).

access rate reductions.<sup>6</sup> For example, in the case of AT&T, the Commission has found that “[a]lthough basic rates have remained relatively high, AT&T has passed on its savings from lower access charges in the form of optional calling plans and other discounts and promotions.” LEC Price Cap Review, para. 61. This suggests that competition in the interexchange market is not sufficient to incent lower rates for all customers, and may create incentives for IXC’s to target rate reductions to only a select few. These practices, in many cases, appear to amount to geographic toll rate deaveraging by AT&T, contrary to the Commission’s established policy.<sup>7</sup>

In general, IXC’s tariffed rates have not fallen in proportion to reductions in LEC’s access charges. Substantial evidence suggests that savings are being passed on to stockholders, not customers. A recent NERA study finds that since divestiture, AT&T has cut prices \$8.521 billion while its access charges fell \$10.299 billion. NERA Study, p.15; see Communications Daily, May 9, 1995, p.3 (NERA’s Bill Taylor quotes updated figures). Since 1991 price cap regulation, AT&T has raised rates \$98 million per year while its access charges fell \$644 million. NERA Study, p. 16. On May 9, 1995, the 12 price cap local exchange carriers filed tariffs representing \$1.2 billion in access charge reductions. Yet, on May 18, 1995, AT&T publicly announced that it would flow-through only \$350 million dollars to its customers. AT&T Press Release, May 18, 1995. Days earlier, AT&T announced that it would in fact raise its rates for small

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<sup>6</sup> AT&T claims that it no longer possesses the market power which justifies classification of AT&T as a “dominant” carrier. However, even assuming that AT&T is correct in this regard, it does not follow that the interexchange market is competitive. In fact, evidence suggests that the interexchange market may operate as an oligopoly, with the rates of the largest firms moving in near lockstep with each other. See, e.g., “State of Competition in Long Distance Markets,” May 1995, National Economic Research Associates (“NERA Study”), p. 31-32.

<sup>7</sup>Such geographic rate deaveraging, if it is occurring, is particularly indefensible in light of the fact that certain regulatory mechanisms spread the cost of access services in high cost areas among all interexchange carriers and among all subscribers, whether located in urban or rural areas. See AT&T Price Cap Recon. Order, 6 FCC Rcd at 679.

business customers by 5%. See Washington Times, May 16, 1995, p. B6. Despite AT&T's 60% share of interstate switched minutes, See April 24 ex parte, p. 31, it elected to flow-through just under 30% of the access rate reductions recently ordered by the Commission.

In addition, price reductions are targeted to customers of promotional savings plans, not all residential or business customers.<sup>8</sup> Recently, AT&T asked the Commission for authority to give its True Savings plan customers the benefits derived from access fee reductions. However, some reports indicate that only about one third of AT&T customers are on this plan. (See Washington Telecom Week, May 26, 1995, p. 14.). Who is the beneficiary of the rest of the savings created by LEC rate reductions? It is the Commission's obligation to ensure that IXC's rates fall at the same rate as reductions in access rates and that those savings get passed on to the IXC's entire ratepayer base, without improper rate discrimination. See 47 C.F.R. § 201.

Substantial evidence, including the Commission's own findings in the LEC Price Cap Review Order, suggests that AT&T is targeting rate reductions to specific customers, and not to its general ratepayer base, which could indicate geographic toll rate deaveraging. Particularly if AT&T files its tariffs as a non-dominant carrier, on one day's notice, new mechanisms would be necessary to enforce the Commission's geographic rate averaging policy. Accordingly, the Commission should adopt an enforcement policy, institute mechanisms to enforce its policy, and ensure that all IXCs flow-through reductions in access charges, and that such reductions are flowed through not just to a select few customers, but to all customers, including residential and small business customers, and particularly those in rural areas.

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<sup>8</sup> The Joint Commenters do not suggest that AT&T should not be permitted to offer discount plans and promotions. Rather, such plans and promotions must be made available to customers in rural areas so as to prevent AT&T from geographically deaveraging its rates.



## CONCLUSION

Consistent with the above, the Commission should ensure that non-dominant regulation of AT&T does not undermine enforcement of established policies. The Commission should adopt appropriate mechanisms, including new rules if necessary, to preclude AT&T from discontinuing service in areas with no other adequate facilities-based interexchange carrier, to enforce its policy prohibiting geographic toll rate deaveraging, and to ensure that the benefits of access rate reductions pass on to all interexchange carrier subscribers.

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UNITED STATES TELEPHONE ASSOCIATION

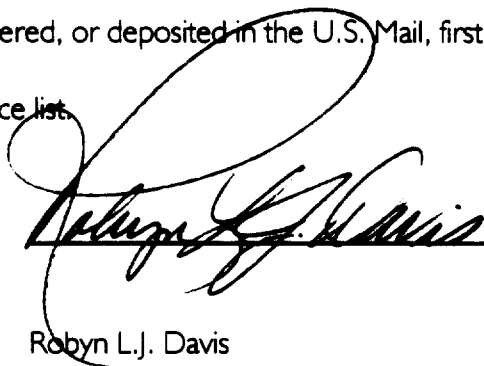
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CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on June 9, 1995 copies of the Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.



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